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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,201	05/29/2001	Charles Young	30454-1001	7863

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EXAMINER	
WALLACE, SCOTT A	

ART UNIT	PAPER NUMBER
2671	6

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/870,201	YOUNG, CHARLES	
	Examiner	Art Unit	
	Scott Wallace	2671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-16 and 18-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8-10,18-20 and 29-34* is/are allowed.

6)☒ Claim(s) *1-6,11-16 and 21-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Young et al., U.S. Patent No. 6,322,368.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claims 1 and 11, Young et al discloses an automated method of collecting audience recognition information concerning a video presentation (column 3 lines 65-67 and column 4 lines 1-5), the method comprising the steps of: displaying an entire video presentation to a plurality of subjects (column 4 lines 25-27); subsequently inquiring of each of the subjects by computer whether each of a plurality of still images obtained from the video presentation are recognized by each of the subjects (column 4 lines 1-5), the inquiring step taking place after the displaying step (column 4 lines 1-5); and for

each of the still images, tabulating a percentage of the subjects reporting recognition by remembrance of the still image in the inquiring step (Fig 4a).

As per claim 12, Young et al discloses wherein the displaying and inquiring apparatus comprise a computer local to each subject (column 3 lines 55-67).

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-3, 11-13, 21-22 and 25-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,322,368. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application displays a video presentation. The Reference and audio/visual presentation like a commercial. Commercials are videos. The application uses the term recognition by remembrance. The reference uses Flow of Attention. The specification of the reference describes the Flow of Attention as audience recall (column 4 lines 1-5). To be able to recall is the same as remembering.

5. Claim 2 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,322,368 in view of Bayer et al., U.S. Patent No. 6,311,190. Bayer et al does not disclose wherein the displaying and inquiring steps are performed on

a computer local to each subject, wherein the tabulating step is performed on a central computer networked to each local computer. This is disclosed in Bayer et al in claim 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Young this way because this would allow for larger surveys in numerous countries (column 1 lines 5-25).

6. Claims 3 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,322,368 in view of Bayer et al. Young et al does not disclose communicating the results of the inquiring step to the central computer over the internet. This is disclosed in Bayer et al in claims 1 and 18. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Young this way because this would allow for larger surveys in numerous countries (column 1 lines 5-25).

7. Claims 4, 14, 23-24, 27-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,322,368 in view of Bayer et al. Young et al discloses most of the limitations of claim 4 as seen in claim 1 above. However, Young et al does not disclose communication the results of the obtaining step via a network to a central computer. This is disclosed in Bayer in claim 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Young this way because this would allow for larger surveys in numerous countries (column 1 lines 5-25).

8. Claims 5 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,322,368 in view of Bayer et al. Young et al does not disclose wherein the displaying and obtaining steps are performed by an element selected from the group consisting of world wide web browsers, and interactive television devices (It is well known to have televisions connected to the internet, WebTV), and a combination thereof. It would

have been obvious to one of ordinary skill in the art at the time the invention was made to modify Young this way because this would allow for larger surveys in numerous countries (column 1 lines 5-25).

9. Claims 6 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,322,368. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application displays a video presentation. The Reference and audio/visual presentation like a commercial. Commercials are videos. The application uses the term recognition by remembrance. The reference uses Flow of Attention. The specification of the reference describes the Flow of Attention as audience recall (column 4 lines 1-5). To be able to recall is the same as recognition.

Allowable Subject Matter

10. Claims 8-10, 18-20, 29-34 are allowed.

11. The following is a statement of reasons for the indication of allowable subject matter: Prior art of record fails to teach displaying the abbreviated presentation to a second plurality of subjects and inquiring of each of the second plurality of subjects whether the abbreviated presentation is recognized by each of the second plurality of subjects. Also prior art of record fails to teach generating by computer the presentation overlaid with a grid, wherein a brightness of portions of the presentation are determined by results of the tabulating step.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Wallace whose telephone number is 703-605-5163. The examiner can normally be reached on Monday thru Friday from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Zimmerman, can be reached on 703-305-9798. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Zimmerman

MARK ZIMMERMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600